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# In the Supreme Court of the United States

OCTOBER TERM, 1941

NO. 225.

H. H. WEGENER,
*Petitioner,*

VERSUS

GUY T. HELVERING, Commissioner
of Internal Revenue,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

By CHAS. H. GARNETT,
608 Hales Building,
Oklahoma City, Oklahoma,

C. F. MILLER,
415 Liberty Bank Building,
Oklahoma City, Oklahoma,

*Counsel for Petitioner.*

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF**

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## PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Your petitioner respectfully shows:

### I.
### SUMMARY STATEMENT OF MATTER INVOLVED

This case was begun in the Board of Tax Appeals. It involves an asserted deficiency in petitioner's income tax for the calendar year 1935 of $13,347.99. Substantially all of this resulted from the inclusion in petitioner's income of the sum of $23,592.08 alleged to be profit or gain realized

from drilling oil wells on leaseholds in Rusk County, Texas, owned by him and Walter H. Gant and Knox L. Garvin as tenants in common in equal undivided interests. The above item is one third of the amount by which the total price for drilling the wells on a footage basis as agreed on between petitioner and Gant and Garvin exceeded his actual cost in drilling them. He returned the other two thirds of such excess as income and paid tax on it. The Commissioner held that petitioner and Gant and Garvin constituted a *partnership* and that in drilling the wells he dealt with the partnership as a business unit and made the above profit on the well drilling contract, notwithstanding he owned an undivided one-third interest in the leaseholds and contributed from borrowed money one third of the so-called partnership capital out of which the amount of the footage price for the wells was paid to him. The Board held that petitioner and Gant and Garvin constituted a *joint venture* in their cooperative development and operation of their separately owned interests in the leases and upon such holding reached the same conclusion as the Commissioner. 41 B. T. A. 857. The petitioner took the case to the Circuit Court of Appeals for the Fifth Circuit for review of the Board's decision and that Court affirmed the Board. 119 Fed. (2d) 49.

The petitioner will be referred to herein as petitioner or taxpayer or by name. All italics are ours unless otherwise indicated.

**The Facts**

The petitioner now resides at Dallas, Texas, but in 1935 and prior years he resided and had his principal place of business in Oklahoma City, Oklahoma (R. 26). Early in 1932 Walter H. Gant and Knox L. Garvin began negotiating for certain oil and gas leases owned by the Reliance Oil & Royalty Corporation and others in Rusk County, Texas. Under date of February 23, 1932, they acquired those leases by assignment and conveyance from the owners for the consideration of drilling wells thereon and paying certain sums out of oil production therefrom as set out in the assignment, which appears in full, except for description of the real estate, signatures and acknowledgments, in the record (R. 99-113).

Wegener was engaged in the business of drilling oil wells and had suitable equipment and an employee organization for that purpose. He also had financial credit which Gant and Garvin did not have. Early in 1932 Garvin invited Wegener to take a one-third interest in the leases, and this Wegener later did (R. 47-55).

Since the character of the relationship between petitioner and Gant and Garvin in the development and operation of these leases is of importance, that part of the record covering the expressed intention of the parties themselves on that point is set out in full.

Wegener said:

"He had told Garvin when he acquired an interest in the leases that *he did not want to be a partnership, because he had experience with partnerships and did*

*not like them.* He understood the liabilities of a partnership and the responsibilities of the members toward each other *and knew that if a partner died the partnership would be tied up, but if there was no partnership, the owners could carry on their business. Garvin explained that they would not have a partnership*" (R. 47).

The witness Miller said:

"Along in January, 1932, Garvin came to his office and met Wegener, and Garvin told Wegener that he had gotten the Rusk County block, and Wegener said he would take a third interest in the block. They discussed the relationship and manner of handling the deal and Wegener said he would take a ⅓ interest 'in these leases but not as a partnership deal, *that he didn't want to be in partnership with anybody,*' and also told Garvin *that he didn't want an interest in any property which he could not sell when he wanted to*" (R. 55).

And again:

"Witness had a conversation with Gant in August, 1936, in which Gant said that he had understood from the first, and *he and Garvin and Wegener had definitely agreed from the first, that their operations would not be a partnership proposition*" (R. 57).

The witness Gant said:

"He lived in Ardmore, Oklahoma, and was the Walter H. Gant interested in the Rusk County leases.

"He had heard Mr. Miller's testimony about a conversation between them in August, 1936, and it was correct. *Garvin, Wegener and he had never had an agreement to operate as a partnership or to be a part-*

*nership.* They had a conversation which 'worked itself into an assignment' of one-third to Wegener at about the time he and Garvin acquired those leases, but 'there was no understanding that there would be a partnership.' *Everything had to be agreed upon unanimously and they always consulted before anything was done.* He always understood *that he held a 'third interest' in the Rusk County leases and he regarded this as his individual property, subject to his right to assign or convey.*

* * * * * * *

"He, Garvin and Wegener each owned a third interest in the Rusk County leases. Wegener got his one-third interest by agreement before any development took place and the written assignment to him followed later. *Each was to get his part of the returns from oil runs from the pipe lines individually, and it was to be on the basis of ⅓ each*" (R. 60-61).

The witness Cund, who had been Garvin's attorney for a period of years, said:

"He knew Gant and Garvin had been partners for several years in some of their Oklahoma operations, and in the conversation about the Texas properties Garvin had explained why they were selling Wegener 'an undivided one-third interest in the property,' '*because they thought he was financially able to help them borrow money to be used in the development of the property,*' and had said 'it wasn't *to be a partnership like he and Mr. Gant had in their operations in Oklahoma.*' Garvin did not state to him what the character of the arrangement was to be other than a one-third interest. He had told Garvin 'that *they might act in such manner, jointly owning the property, that the law might make it a mining partnership*'" (R. 62).

The witness Smilie, an accountant living in Oklahoma City, said:

> "He never had a conversation with any of the three gentlemen (Gant, Garvin or Wegener) with respect to their relation to each other in the development of the Rusk County, Texas leases, but was present when Revenue Agent Sullivan was examining petitioner's 1935 return and heard a conversation between Sullivan and Garvin and heard Garvin tell Sullivan that *'he had never considered Gant, Garvin and Wegener as a partnership,'* and that some of their acts 'might have bound them jointly,' and 'they might have appeared to be partners, but *it wasn't his intention ever to be a partner'* " (R. 67).

Garvin died prior to the trial before the Board and the only evidence available of his intention was statements he had made.

After Wegener had orally agreed that he would take a one-third interest in the leases, he drilled some seven or eight wells on them in 1932 at a price per foot agreed upon between him and Gant (R. 47, 55). He billed Gant and Garvin for two thirds, or each of them for one third, of the agreed price of these wells, which exceeded their actual cost, and charged himself with one third of his actual cost in drilling them (R. 47, 53, 55).

On July 7, 1932, another agreement was entered into between the assignors of these leases and Gant and Garvin which amended, supplemented and modified the original contract of assignment. This, omitting signatures and acknowledgments, appears in full in the record (R. 113-119). On September 15, 1932, a further agreement was

entered into between the same parties amending the previous agreements of February 23 and July 7, 1932 (R. 69-70). On October 31, 1932, pursuant to their previous oral agreement Gant and Garvin assigned to petitioner an undivided one-third interest in the leases so acquired by them from Reliance Oil & Royalty Corporation and others. The habendum clause of this assignment reads as follows:

> "To have and to hold said undivided one-third (⅓) interest in and to said above described oil and gas leases, and said rights, options and privileges, unto the said H. H. Wegener, his heirs and assigns" (R. 84).

The assignment further provided:

> "The undivided one-third interest in and to the said above described oil and gas leases herein assigned unto the said H. H. Wegener is chargeable with one-third of all oil considerations payable to said Reliance Oil and Royalty Corporations, etc. (R. 85).
>
> * * * * * * *
>
> "By the acceptance of this assignment said H. H. Wegener assumes one-third of all duties, obligations and liabilities imposed upon the said Walter H. Gant and Knox L. Garvin in that certain original contract executed by Reliance Oil & Royalty Comporation, etc.
>
> * * * * * * *
>
> "And the ⅓rd interest in and to the said above described oil and gas leases herein assigned to the said H. H. Wegener, shall be and remain jointly and severally liable with the ⅔rds interest in said above described oil and gas leases retained by the said Walter H. Gant and Knox L. Garvin for the payment of all oil and money considerations payable to the said Reliance Oil & Royalty Corporation, etc." (R. 88).

One issue before the Board was whether Gant, Garvin & Wegener were a general partnership in the development and operation of the oil leases above referred to. The Board found as a fact that they were not a general partnership, but that their operations were a joint venture. The petitioner contends that they were a mining partnership which, if it be deemed a species of joint venture, has some characteristics distinct from an ordinary joint venture. The Board recognized that they owned the leases in undivided one-third interests (R. 25). This necessarily made them owners of those leases as tenants in common.

By reason of the Board's holding that they were not a general partnership, the references to them as partners or a partnership in the various instruments introduced in evidence may be understood to refer, and properly under all the evidence should be deemed to refer, to them as mining partners and a mining partnership.

About September 1, 1932, Miss Boone, a bookkeeper in the employ of Gant, opened a set of books on the leases here involved in the name of Gant, Garvin and Wegener, a partnership, and kept them in Gant's office at Ardmore, Oklahoma (R. 65-66).

In 1932 Miller, of the accounting firm which kept Wegener's books, told him and Garvin that it would require much unnecessary detail during the period of development to keep three sets of books on those leases and recommended a joint set of books, which should be so kept that when the development period was over each could take up one third of each item on his individual books and dispense

with the joint books. Up to that time, the accounts for the drilling were kept on Wegener's individual books on which he charged Gant and Garvin with two thirds of the amount of the agreed price for the wells and himself with one third of their cost (R. 55).

After Miller learned that the Gant, Garvin and Wegener books had been opened in Gant's office, he had Wegener bill 100% of the amount for drilling the wells computed on the agreed footage basis and charge this total to an account of Gant, Garvin & Wegener on his books and credit an account called "Lease Investment Contra" with one third of the profit. He personally prepared some of these bills in 1935 and instructed Wegener to set out full details on his tax return to show the segregation of one third of the profit in these transactions, because he was dealing with himself and couldn't be his own employer (R. 55-56).

The figure of $130,594.50 under Item 2(b) of Wegener's return (R. 82) for 1935 represented the total number of feet drilled at the agreed rate per foot. In setting up Wegener's books so they would show comparative data on drilling operations from year to year, the total so computed in each year would be set up as the gross from contracting, but he would be entitled to receive only the two thirds of it that came from Gant and Garvin (R. 57). Of this sum of $130,594.50 for 1935 computed at the agreed footage rate, $70,726.23 represented the excess of the agreed price over cost and one third was payable by Wegener to himself and two thirds by Gant and Garvin to Wegener (R. 57). *All of this $130,594.50 which Wegener received for drilling in*

*1935 was paid to him out of money borrowed by Gant, Garvin & Wegener in that year (R. 56). The Board specifically found this to be the fact (R. 29).*

Homan, also of the accounting firm which kept Wegener's books, said that until the fall of 1932 Gant and Garvin were charged on his books with two thirds of the expenditures for equipment on the leases and he was charged with one third. Referring to the "Lease Investment Contra" account in Wegener's ledger, of which the first entry was November 30, 1932, and the last December 1, 1937, he said this account was opened at his direction and the first three entries were in his handwriting, and that it was an account to contain, as a credit item, the difference between the actual cost of drilling the wells, and the amount at which they were charged to Gant, Garvin and Wegener and set up on their joint books, and that, "It would have been difficult to keep on Mr. Wegener's books his one-third of the cost of each of these wells and each item in the cost and to have, on another set of books for Gant and Garvin, each one third of the cost, or on the partnership books of Gant and Garvin, two-thirds of the cost," and "so for convenience, and to check the settlement of Gant and Garvin with Wegener individually, they were set up on the joint books at Ardmore at the agreed price per foot."

Originally the "Lease Investment Contra" Account showed "The entire difference between Wegener's cost and the price based on a footage rate," but "after settlement of the 1932 income tax case with the Revenue Agent it was reduced to one-third and since 1932, these figures reflect

Wegener's one-third of the so-called profit." He said the words "Lease Investment Contra" were "to indicate it was to be used as a credit balance account to reduce the other account in which the investment is carried," and under that caption was written "Reduction of H. H. Wegener's cost of one-third interest in Gant, Garvin & Wegener joint venture" (R. 64-65). "This was to take care of the difference in the cost of his one-third between what was billed on these statements and what it actually cost him" (R. 65).

Miss Boone, an employee in Gant's office in charge of the accounts and books of the business, caused letterheads to be printed bearing the names of "Gant, Garvin and Wegener," and used them in her correspondence. She did this without any instructions from either Gant, Garvin or Wegener and because she felt that separate letterheads would help keep the accounts of that business separate from those of various other properties she was handling (R. 66). It does not appear that these letterheads are of any significance, though the Board and the Court refer to them (R. 28, 141). Wegener said he had seen them, but never had used one (R. 51).

All payments to Wegener were from money borrowed by the three of them and paid into their joint account. He said:

> "They borrowed money at the bank and 'my check and Mr. Gant's check and Mr. Garvin's check' for oil runs 'all went into the bank to pay off this note we had signed.' These checks didn't come in payable to Gant,

Garvin & Wegener, but were separate checks to each individual" (R. 53).

The first money borrowed was from the First National Bank & Trust Company of Oklahoma City on October 17, 1932 (R. 54), to secure the payment of which they gave their mortgage or trust deed covering their leases (R. 95-97). This instrument recites that "H. H. Wegener, Walter H. Gant and Knox L. Garvin each own an undivided one-third interest in and to the property, etc." (R. 96). It secured an $80,000 note which the three of them signed at that time and also secured a $99,000 note of Gant and Garvin, not signed by Wegener and for the payment of which no part of his interest in the leases and the oil runs was pledged (R. 94-97).

On January 5, 1934, they borrowed $10,000 from the Sun Oil Company and then borrowed additional sums from that company on February 12, 1934, February 16, 1934, and March 22, 1934. Each sum borrowed was secured by a trust deed covering their oil property and a pledge of their oil runs (R. 72-73). On September 12, 1934, Gant and Garvin as individuals gave a trust deed on their undivided two-thirds interest in the leases to secure a loan of $50,000 from the First National Bank & Trust Company of Oklahoma City. It does not appear whether this was a loan of that sum at that time or was given to take up a previous loan. *It is significant that Wegener was not a party to this transaction and that the instrument purported to cover the undivided two-thirds interest of Gant and Garvin in the leases* (R. 73-76).

On August 13, 1935, Gant, Garvin and Wegener as a partnership and as individuals borrowed $300,000 from the National Bank of Tulsa and gave their trust deed covering the leases and pledged their oil runs to secure the payment thereof (R. 89-94). In respect of these borrowings Wegener's testimony was that:

> "After they borrowed money at the Exchange National in Tulsa the checks for runs went there until the notes were paid off and the same was true as to the money they borrowed from the Sun Oil Co." (R. 53.)

The witness Miller testified:

> "He was present with Wegener and Garvin, at Ardmore on August 26, 1935, when Wegener got a check for $76,000, which was his first payment on the drilling, out of the $300,000.00 borrowed from the Tulsa Bank [R. 89-94]. The money Wegener got in payment on his drilling of the wells was from loans, and he pledged his ⅓ interest in the oil runs for repayment of the loans and the money from the oil runs went direct to the lenders and, except for enough allowed the borrowers for operating expense, was applied to pay off the loans.
>
> "In November, 1935, Gant, Garvin and Wegener borrowed another $100,000.00 from the Tulsa bank and Wegener got $25,000.00 out of that, and in December, 1935, they borrowed some more money from the Sun Oil Co., and Wegener got $34,000.00 out of that" (R. 56).

In its findings of fact the Board says:

> "In order to finance the development and operation of the leases, it was necessary to borrow money from time to time and oil runs were pledged to repay the loan" (R. 27).

And again:

"In 1935 Gant, Garvin, and Wegener, as a co-partnership and as individuals, secured loans from the National Bank of Tulsa, Tulsa, Oklahoma, in the amount of $300,000 and assigned to F. M. Sowle, as trustee, the Rusk County leases as security for the loan. Other loans were made during the year. The money in payment of the oil runs went to the bank to liquidate the loans and the bank turned over to the joint account enough money to pay the current operating expenses. *Petitioner was paid for drilling from the money borrowed from time to time.* It was understood that he would receive the full amount of the footage rate for drilling wells" (R. 28-29).

It will be noted that payments made to Wegener were *solely for drilling the hole on a footage basis* (R. 47). All physical equipment required to complete a well, as casing, connections, surface lines, separator, flow tanks, etc., was obtained from some other source.

Gant, Garvin and Wegener filed a return on Form 1065 for each of the years 1932, 1933, 1934 and 1935. This form is entitled "Partnership Return", but is the only form of return provided for use by a group organization such as a "partnership, syndicate, pool, joint venture, etc." The year 1932 showed a loss and all the others a profit. The net income for 1935 was $55,680.67 and was distributed in equal parts to the three members of the organization (R. 48-49). Wegener included his one third of the profits in income on his return for each year and paid the tax thereon. The amount thus returned and upon which tax was paid for 1935 was $18,560.22 (R. 29, 49-51). He also included in in-

come on his 1935 return the sum of $47,184.50 as received from Gant, and Garvin for drilling wells. This was two-thirds of the $70,776.23 by which the $130,594.50 received from the joint account of Gant, Garvin and Wegener exceeded the $59,818.27 which it cost him to drill the wells and was the portion of that excess allocated to Gant and Garvin (R. 29). *The partnership returns did not in any year show any expenditure of the partnership for drilling wells nor any capital investment in them nor take any deduction for drilling them.*

The Board of Tax Appeals held that Gant, Garvin and the petitioner in their operation of developing their leases constituted a joint venture and a partnership within the provisions of the applicable Revenue Act, and that petitioner was required to include in his income subject to taxation the full $70,776.23, of difference between the $130,594.50 received by him and his cost of $59,818.27, as gain derived from the drilling of wells for the alleged joint venture as though it were a distinct and opposite contracting party in which he had no interest and was itself the owner of the leases, and further held that even though ⅓ of the $70,776.23, being the sum of $23,592.08, was paid to him out of his capital investment in the alleged joint venture or partnership and out of his share of the capital assets thereof, still the same was taxable gain to him, because, as the Board asserted, he had by that payment merely changed his share in the cash capital assets of the alleged joint venture or partnership into an equal share in its capital assets consisting of oil wells. Pursuant to its holdings the Board rendered

a decision and final order of redetermination adjudging a deficiency in tax against the taxpayer for the year 1935 in the sum of $13,347.99.

The court below followed the Board's reasoning and affirmed its decision, Judge Hutcheson dissenting in a vigorous opinion (R. 139-151).

## II.
## JURISDICTION

1. The date of the judgment of the Circuit Court of Appeals to be reviewed is April 7, 1941 (R. 151). The opinion of the Court was handed down on the same day (R. 139).

2. The statutory provision under which the jurisdiction of this Court is invoked and which is believed to sustain its jurisdiction is Section 347(a) of Title 28 of the United States Code, being Section 240 of the Judicial Code, as amended.

3. The decision of the court below is in conflict with the decisions of various Circuit Courts of Appeals and of this Court, and decides an important question of federal law which has not been, but should be, settled by this Court, and decides an important question of the local law of Texas in a way in conflict with the applicable decisions of the courts of that State, and decides an important question of general law in a way in conflict with all authority. This Court entertains jurisdiction to grant writs of certiorari in similar cases at every term, and there can be no need to list

any of the great array of cases in which its jurisdiction is so exercised.

4. The petition for the writ is presented under Rule 38, paragraph 5(b), of the Revised Rules of this Court adopted February 13, 1939, and effective February 27, 1939.

## III.
## QUESTIONS PRESENTED

The questions presented on this petition may be stated as follows, the answers to the first three being preliminary, but perhaps not essential, to the answer to the fourth:

1. Were the petitioner and his associates in their joint operations in the development of their oil and gas leases a joint venture or a mining partnership?

2. If a joint venture, were the oil and gas leases capital assets of the venture as a legal entity or business unit separate and distinct from its members?

3. If so, is a payment to petitioner made out of capital assets of such venture and a repayment in part of money which he had paid into its capital, profit and taxable gain to him?

4. Where petitioner drilled wells on oil and gas leases owned by him and two associates, either individually in undivided interests of one third each or as a mining partnership or joint venture in which each owned a one-third interest, and one third of the cost of the wells was to be borne by each, either directly, or indirectly as a member of

the mining partnership or joint venture, and a price was agreed on between petitioner and his associates for the drilling of the wells and he was paid this price out of money they had borrowed and placed in a joint account, one third of which as between themselves was the debt of each, either directly, or individually as a member of the mining partnership or joint venture, and the price thus paid to petitioner exceeded his actual cost in drilling the wells, two-thirds of which excess in price over cost he included in income on his tax return: Is the remaining one third of this excess in agreed price over actual cost so paid to petitioner a return in part of the capital sum he paid into the joint account, or is it a new acquisition and taxable gain to him under the income tax statutes?

## IV.
## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The petitioner relies on the following reasons for the allowance of the writ of certiorari:

1. The Circuit Court of Appeals, in holding that, as a matter of law upon the undisputed facts Gant, Garvin and Wegener in their joint operations in the development of their Rusk County, Texas, oil and gas leases constituted that form of a restricted general partnership known as a joint venture, has rendered a decision in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *First Mechanics Bank* v. *Commissioner*, 91 Fed. (2d) 275,

and as well in conflict with all text writers and with all other court decisions, on the same matter.

2. The Circuit Court of Appeals, in holding that as a matter of law upon the undisputed facts, Gant, Garvin and Wegener in their joint operations in the development of their Rusk County, Texas, oil and gas leases did not constitute a mining partnership, has rendered a decision on a question of general law in conflict with the applicable decisions of this Court in *Kahn* v. *Central Smelting Company*, 12 Otto (102 U. S.) 641, and in *Bissell* v. *Foss*, 114 U. S. 252, and in conflict with all text writers and all other court decisions, on the same matter, and has decided an important question of local law in the State of Texas in a way in conflict with the law of that State as declared in 29 Texas Jurisprudence 698, and in the decisions of the courts of that State in *Adams* v. *Texhoma Oil & Refining Co.* (Tex. Civ. App.), 262 S. W. 139, 141, and *Munsey* v. *Mills & Garitty*, 115 Tex. 469, 283 S. W. 754.

3. The Circuit Court of Appeals in holding that petitioner as an individual drilled oil wells for Gant, Garvin and Wegener as a business unit and independent opposite contracting party, and not for himself as to his one-third interest in the wells and leases and for Gant and Garvin as to their two-thirds interest therein, but just as any outsider might have drilled the wells for Gant, Garvin and Wegener as a business unit, has rendered a decision in conflict with the decision of the District Court of the United States for the Northern District of Ohio in *United States* v. *Coulby*, 251 Fed. 982, and with the decision of the United

States Circuit Court of Appeals for the Sixth Circuit in *United States* v. *Coulby*, 258 Fed. 27, and with the decision of the Court of Claims in *Craik* v. *United States*, 31 Fed. Supp. 132, and with its own decisions in *Carroll* v. *Commissioner*, 70 Fed. (2d) 806, and *Jennings* v. *Commissioner*, 110 Fed. (2d) 945, and with the applicable decision of this Court in *Neuberger* v. *Commissioner*, decided November 12, 1940, and not yet officially reported, but reported in 61 Sup. Ct. 97.

4. The Circuit Court of Appeals in deciding that the amount received by petitioner out of capital assets of Gant, Garvin and Wegener in excess of one third of his actual cost in drilling the oil wells on the oil and gas leases involved, being the sum of $23,592.08, was not a repayment of a part of the cash capital he had paid into Gant, Garvin and Wegener, but was a new acquisition and was profit and taxable gain to him, has rendered a decision in conflict with the Treasury Ruling in General Counsel's Memorandum 6582, Cumulative Bulletin VIII-2, 200, and with the decisions of the Board of Tax Appeals in *Leo Schwartz*, 7 B. T. A. 223, *S. U. Tilton*, 8 B. T. A. 914, *Augustine M. Lloyd*, 15 B. T. A. 82, and *Melville W. Thompson*, 18 B. T. A. 1192, and in conflict with the court decisions cited in the preceding paragraph, and in conflict with (quoting Judge HUTCHESON in his dissenting opinion) "everything that has been written and said in taxing statutes and decisions relating to and affecting partners and partnerships and their return and payment of income taxes" (R. 150), and has decided an important question of Federal law in respect of income taxation which has not been, but should be, settled by this Court.

Wherefore, your petitioner prays that a writ of certiorari be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court had in cause No. 9693 in said Court, entitled *H. H. Wegener, petitioner,* v. *Commissioner of Internal Revenue, respondent,* to the end that said cause may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment of said United States Circuit Court of Appeals in said case be reversed by this Court, and that petitioner have such further relief as to this Court may seem proper.

Dated at Oklahoma City, Oklahoma, this 25th day of June, 1941.

H. H. WEGENER,
Petitioner,

By CHAS. H. GARNETT,
608 Hales Building,
Oklahoma City, Oklahoma,

C. F. MILLER,
415 Liberty Bank Building,
Oklahoma City, Oklahoma.

*Counsel for Petitioner.*